Office-Supreme Court, U.S.
FILED
JUL 1 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1990

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CASPAR WEINBERGER ET AL.,
Petitioners,
v.
CARLOS ROMERO-BARCELO ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals erred in ordering an injunction, limited as to scope and duration, for a continuous violation of the permit requirements of the Federal Water Pollution Control Act, which violation was in "utter disregard of the statutory mandate."

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BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT OF THE CASE[1]

I. Introduction

Carlos Romero-Barceló, the Governor of Puerto Rico, on behalf of Puerto Rico, the island municipality of Vieques, and the other respondents (referred to collectively as "Puerto Rico"), hereby opposes the petition for a writ of certiorari filed on behalf of the Secretary

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[1] On May 28, 1981, Puerto Rico filed its own petition for a writ of certiorari to obtain review of other portions of the same decision of the United States Court of Appeals for the First Circuit. Romero-Barceló v. Weinberger, No. 80-2033. Puerto Rico's petition contained a brief statement describing the factual and procedural background of the case, and the Court is respectfully referred to that statement for details not repeated herein.

of Defense and officials of the Department of the Navy (referred to collectively as "the Navy"). Puerto Rico respectfully submits that the Navy's petition raises no significant questions of federal law that merit this Court's attention.

This case concerns the propriety of an injunction of limited scope and duration restraining the Navy from further violation of the Federal Water Pollution Control Act [2] in connection with intentional and accidental discharges of ordnance into the coastal waters of the inhabited island of Vieques. Both the trial court and the First Circuit Court of Appeals found that the Navy, by discharging bombs and shells into Puerto Rican coastal waters without first obtaining a National Pollution Discharge Elimination System (NPDES) permit from the Environmental Protection Agency, engaged in a continuing violation of the Clean Water Act.

The Navy does not dispute that conclusion. Instead, characterizing its conduct as a "technical" violation of the Clean Water Act [3]—a characterization specifically rejected by the Court of Appeals—the Navy asks this Court to review the remedy imposed by the Court of Appeals: an injunction prohibiting further bombing and shelling of coastal waters until the Navy either obtains the required permit under the Clean Water Act or, pursuant to Section 313(a) of the Act,[4] obtains a Presidential exemption from the permit requirement.

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[2] 33 U.S.C. § 1251 *et seq.* (1976 & Supp. III 1980) (referred to hereinafter as the "Clean Water Act").

[3] *Cf.* Navy's Petition for a Writ of Certiorari, Appendix C, p. 162a. As used herein, the abbreviation "Navy Pet." refers to the Navy's petition for a writ of certiorari; the abbreviation "App." refers to the Appendices filed with that petition; and the abbreviation "C.A.J.A." refers to the Joint Appendix filed by the parties in the Court of Appeals.

[4] 33 U.S.C. § 1323(a) (Supp. III 1980).

II. Summary of Facts

This case arises out of the Navy's air-to-ground bombing and ship-to-shore shelling of the inhabited island of Vieques. Vieques is a small island approximately 20 miles long and an average of 4.5 miles wide. More than 8,000 people live on the island.

The Navy possesses title to approximately 76 percent of the island's land. Prior to 1970, the Navy conducted air-to-ground bombing and ship-to-shore shelling on the sparsely populated, nearby Puerto Rican island of Culebra. Naval land on Vieques was used principally for small-scale artillery training and amphibious exercises.

Between 1971 and 1975, the Navy methodically and clandestinely transferred Culebra bombing and shelling activities to Vieques.[5] As a result, the Navy tremendously intensified the level of weapons firing on Vieques. Between 1974 and 1977, the Navy increased by over *900 percent* the number of 500 (MK82), 1,000 (MK83) and 2,000 (MK84) pound bombs dropped on and around

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[5] The clandestine nature of the Navy's decision to transfer training operations from Culebra to Vieques is apparent from documents produced by the Navy before trial. One confidential document revealed the Navy's awareness that the tempo of training operations on Vieques was a sensitive issue:

> It would seem *advantageous* to spread out the usage [on Vieques] somewhat so as to give more ships a chance to fire without increasing the *apparent* weekly tempo.

C.A.J.A. 1506 (emphasis added). The document also stated:

> With regard to Vieques, [Rear Admiral] Ward indicated that *we should be very careful not to appear increase our tempo of operations above that of previous yea. . . . .*

C.A.J.A. 1504 (emphasis added). An internal Naval communication in April, 1972, stressed that, due to the "extreme sensitivity" of any plan for relocating Culebra operations to Vieques, all Navy message traffic on the subject was to be "flagged limited distribution special handling." C.A.J.A. 1413.

Vieques.[6] Bombing, shelling, and other military activities have resulted in the discharge of millions of pounds of munitions and other pollutants into the coastal waters of Vieques, with damage to fragile coral reefs, seagrasses, and other marine organisms and habitats. By the Navy's own admission, the beaches and waters surrounding Vieques are now saturated with ordnance.[7]

The Navy was aware of the damage that would be inflicted on the marine environment of Vieques by the shift of Culebra training activities to that island. A report prepared for the Navy in 1972 warned that expanded range use on Vieques "would cause a subtle and adverse impact [on] the total marine environment of these waters." The report warned that coral reefs in Vieques coastal waters would be irreparably damaged. "Although much of the resulting ecological damage may be repaired by nature in time, some damage to coastal zones, and reef systems in particular, is irreparable." [8]

The Clean Water Act expressly prohibits the "discharge" of any "pollutant" from a "point source" into the "navigable waters" of the United States without a permit issued by the EPA or a state with an EPA-approved permit program.[9] The Act defines the term

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[6] C.A.J.A. 1796-1824.

[7] C.A.J.A. 703-4, 757-60, 810-12, 1518-52, 1603-19. The extraordinary intensification of bombing and shelling activities on Vieques as Culebra sites were abandoned is graphically illustrated in the record. *See* C.A.J.A. 1782-1952. Items discovered in the waters of Vieques near the reefs include exploded and unexploded bombs and shells, practice ordnance, parachutes, parachute cables, flares, flaring casings, barges and other military vessels, machine gun rounds, bazooka rockets and many unidentifiable ordnance fragments.

[8] C.A.J.A. 284-85. At trial, the Navy's own witness testified that "[t]he fringing reefs on both sides of the north central cove . . . have been extensively bombed." C.A.J.A. 311.

[9] §§ 301, 402, 403, 502(6), (7), (8), (12), (14), (16), 33 U.S.C. §§ 1311, 1342, 1343, 1362(6), (7), (8), (12), (14), (16).

"pollutant" to include "munitions" and wrecked or discarded equipment. The term "point source" is defined to include vessels and other conveyances from which pollutants may be discharged.[10] Under the statutory scheme, shells, bombs and other ordnance discharged into the waters around Vieques are subject to the strictures of the Act.

The Navy is chargeable with knowledge of these requirements of the Act. In the words of the trial court, the language of the Act is "unambiguous."[11] Furthermore, in 1976, a lawsuit was commenced challenging Navy bombing and shelling activities on the island of Kahoolawe in Hawaii.[12] The complaint in that case asserted, among other things, that the Navy could not conduct ship-to-shore shelling and air-to-ground bombing without first obtaining an NPDES permit under the Clean Water Act.[13] Notwithstanding these facts and in utter disregard of the explicit command of the statute, the Navy neither sought nor obtained a permit from the EPA for bombing and shelling of the coastal waters of Vieques.

III. Decisions of the Courts Below

On March 1, 1978, Puerto Rico commenced this action against the Navy in the United States District Court for the District of Puerto Rico. Puerto Rico sought injunc-

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[10] § 502(6), (14), 33 U.S.C. § 1362(6), (14).

[11] App. 80a.

[12] Aluli v. Rumsfeld, Civ. Action No. 76-0380 (D.Haw.).

[13] In its petition, the Navy untruthfully asserts that prior to the filing of Puerto Rico's complaint in 1978 nobody had ever contended that the Clean Water Act applied to the incidental release of ordnance into coastal waters. Navy Pet. 13. The Navy knows full well that it was sued in 1976 over the failure to obtain an NPDES permit for such activities. The Navy is being disingenuous, therefore, when it asserts to this Court that "the first inkling" it had "that anyone thought that a NPDES permit was required was the complaint which was filed in this suit [concerning Vieques]. . . ." *Id.*

tive relief until such time as the Navy complied fully with the Clean Water Act.[14]

On September 17, 1979, the trial court found that the Navy had violated and was continuing to violate the "unambiguous language" of the Act by discharging ordnance into the navigable waters of Vieques without an NPDES permit. The trial court refused, however, to enjoin Naval bombing and shelling during the time period required to obtain an NPDES permit.[15]

The Navy did not even bother to appeal from the ruling of the trial court that its conduct violated the Act. Indeed, its petition to this Court admits what has long been obvious: that "the literal language of the Clean Water Act covers inadvertent release of shells and bombs into the coastal waters of Vieques." [16]

On January 26, 1981, the Court of Appeals vacated the judgment of the trial court on the Clean Water Act and remanded with instructions to enter an order directing the Navy "to take all steps necessary to insure that no ordnance is discharged into the coastal waters of Vieques until such time as it obtains a NPDES permit." [17] The Court of Appeals ruled that the Navy's violation of the Act was not "technical" and that the Navy had "utterly disregarded the statutory mandate" by conducting bombing and shelling operations without first having obtained

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[14] Puerto Rico sought relief for violation of other laws as well. *See* App. 55a-56a.

[15] App. 78a-86a, 165a.

[16] Navy Pet. 4, n.4. Nor did the Navy appeal with respect to the matter it mentions in passing (Navy Pet. 13), that Puerto Rico did not comply with a 60-day notice requirement. Nor could the Navy have so appealed. Puerto Rico long ago filed a motion in the district court to cure that alleged defect. The Navy did not oppose the motion and the district court granted it. (C.A.J.A. 164-171.) The Navy's mention of the 60-day notice matter in this Court is a red herring.

[17] App. 49a.

a permit.[18] The Court of Appeals also stated that the Navy could apply for a Presidential exemption from the permit requirement pursuant to 33 U.S.C. § 1323(a) if the injunction significantly interfered with Navy preparedness.

REASONS FOR DENYING THE PETITION

I. The Petition Raises a Question that in All Likelihood Will Be Mooted by the Completion of the Administrative Process Concerning the Permit.

After the Navy filed its petition with this Court, the EPA gave public notice of a draft NPDES permit and announced its tentative decision to issue that permit.[19] Were the Court to grant the Navy's petition, administrative processing of the Navy's application for an NPDES permit in all likelihood would be completed before the Court could reach a decision on the merits. In addition, the Navy can resort to another administrative remedy—the application for Presidential exemption—in the event that it is dissatisfied with the administrative processing of its permit application at EPA. In either case, this Court is being asked to consider a question that is thus more academic than real at this juncture.

This Court on many occasions has expressed its disinclination to consider petitions raising questions that are likely to become moot.[20] Even if a case may not be completely mooted during the pendency of an appeal, this Court has observed that certiorari should not be granted

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[18] *Id.*

[19] Public Notice No. NPDES 81-161, Application No. PR0023582, EPA Region II, May 29, 1981.

[20] *E.g.*, Cousins v. Wigoda, 409 U.S. 1201, 1204 (Rehnquist, Circuit Justice, 1972); Taggart v. Weinacker's, Inc., 397 U.S. 223, 226 (1970) (per curiam).

to resolve the "small embers of controversy" that might remain.[21]

Furthermore, since the Navy can apply for a Presidential exemption from the permit requirement, it can extinguish whatever controversy remains without resort to this Court. If the Navy is sincere in asserting that an injunction would affect its national security obligations,[22] then the Navy will presumably apply for Presidential exemption in the event that the permit procedure fails to produce a result satisfactory to it. In either case—whether the Navy resolves the matter through EPA or the Executive Office of the President—this Court's intervention is hardly merited.

II. The Ruling of the Court Below Does Not Conflict with Fourth Circuit Decisions Cited by the Navy.

The Navy asserts that the decision of the court below conflicts with the decisions of the Fourth Circuit in *State Water Control Board* v. *Train*, 559 F.2d 921 (4th Cir. 1977), and *Consolidation Coal Co.* v. *Costle*, 604 F.2d 239 (4th Cir. 1979), *rev'd sub nom. EPA* v. *National Crushed Stone Ass'n*, —— U.S. ——, 66 L.Ed. 2d 268 (1980).[23] Each of these cases is consistent analytically and philosophically with the decision of the First Circuit in this case.

State Water Control Board dealt with the narrow problem of whether the receipt of grant money under the Clean Water Act by publicly owned treatment works for construction of treatment plants was a condition precedent to compliance with a requirement to achieve by July

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[21] Taggart v. Weinacker's, Inc., 397 U.S. 223, 225 (1970) (per curiam).

[22] Navy Pet. 13-14.

[23] Navy Pet. 5-6. The Navy's petition does not cite the decision of this Court in *National Crushed Stone*.

1, 1977, the degree of effluent reduction attainable through secondary treatment under Section 301(b)(1) of the Act, 33 U.S.C. § 1311(b)(1). The court's opinion said merely that courts have equitable discretion to determine whether and to what extent injunctive sanctions should be imposed "for violations brought about *by good faith inability* to comply with the deadline." 559 F.2d at 927 (emphasis added). Similarly, the issue before the Fourth Circuit in *Consolidation Coal* was whether and to what extent sanctions could be imposed on coal companies that exercised "good faith efforts" to comply with the best practicable control standards but were unable to do so by the July 1, 1977, deadline. 604 F.2d at 245.

Neither decision involved a situation where, as here, the polluter "utterly disregarded the statutory mandate" to obtain an NPDES discharge permit. The First Circuit could hardly have chosen stronger words than those to characterize the Navy's conduct.[24] Violations of the permit requirements of the Clean Water Act in utter disregard of the statutory mandate are different from the "good faith" efforts to comply with the July 1, 1977, compliance deadlines involved in *State Water Control Board* and *Consolidation Coal*. Nothing in the Fourth Circuit decisions suggests, even by implication, that a more stringent remedial policy should not be applied by

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[24] Courts reserve the phrase "utter disregard" to express strong disapproval of a party who willfully ignores a legal obligation. *See, e.g.*, FTC v. National Lead Co., 352 U.S. 419, 429 (1957):

> Those in utter disregard of law, as here, "call for repression by sterner measures than where the steps could reasonably have been thought permissible."

(*Quoting from* United States v. United States Gypsum Co., 340 U.S. 76, 89-90 (1950).) *Accord*, NLRB v. Union Nacional de Trabajadores, 540 F.2d 1 (1st Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977); United States v. Gonzales Vargas, 558 F.2d 631 (1st Cir. 1977); Standard Oil Co. of California v. FTC, 577 F.2d 653, 662 (9th Cir. 1978).

the federal courts in the circumstances presented by this case.

III. The First Circuit Applied Settled Principles of Federal Law in Enjoining the Navy's Violations of the Clean Water Act.

The decision of the court below is fully consistent with other decisions under the Clean Water Act and related environmental statutes. The court below, in fact, properly relied on two longstanding decisions involving the propriety of injunctive relief for violations of the Act's permit requirements.

In *Save Our Sound Fisheries Ass'n* v. *Callaway*, 387 F. Supp. 292 (D.R.I. 1974), the court enjoined the Army from disposing of dredged materials in violation of several laws, including the Clean Water Act. The court stated:

> The statutory procedures for obtaining a permit . . . before potentially harmful substances are introduced into the water are designed to insure that such decisions are based on specific and informed findings regarding the effect of such dumping on the marine environment.[25]

And in *Cooper* v. *Wisdom*, 440 F. Supp. 1027 (S.D. Fla. 1977), the court restrained the Army from dredging marine areas under the authority of an invalid NPDES permit. The court stated that because the operation was being carried on without a valid permit, it "has therefore not been evaluated according to established criteria." The court concluded that "the plaintiff's right to protective relief from the effects of an invalid permit is clear." 440 F. Supp. at 1030.

The permit requirement in Section 301(a) is the "enforcement hub" of the Act, at the center of a "web of

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[25] 387 F.Supp. at 299-300.

complex interrelated regulatory programs." [26] The permit is the mechanism by which individual point sources are directly brought into compliance with the Act.[27] If the courts in their discretion could allow certain point sources to circumvent the prohibition of Section 301(a), polluters would be free to discharge their effluents without undergoing the detailed administrative review and compliance procedures mandated by the Act. This result clearly contravenes Congress' intent in designing the permit system "to regulate to the fullest extent possible those sources emitting pollution. . . ." [28] The Court of Appeals recognized this when it ordered the Navy to take all steps necessary to insure that no ordnance is discharged into the coastal waters of Vieques until it obtains an NPDES permit.

The courts have a responsibility to "protect the integrity of the . . . process mandated by Congress. . . ." [29] Congress has decided the order of priorities in the area of federal water pollution control efforts, and structured the NPDES permit process accordingly. Now "it is for the Executive to administer the laws and for the courts to enforce them. . . ." [30] If the Navy wishes to modify the Congressional scheme for the issuance of discharge permits, it should request such a change from Congress—not by judicial fiat.[31]

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[26] United States v. Holland, 373 F. Supp. 665, 668 (M.D. Fla. 1974). *See also* United States v. Earth Sciences, Inc., 599 F.2d 368 (10th Cir. 1979).

[27] *See* S. Rep. No. 92-414, 92d Cong., 1st Sess. 72 (1971), *reprinted in* 2 *A Legislative History of the Water Pollution Control Act Amendments of 1972*, 93d Cong., 1st Sess. 1490 (1973).

[28] United States v. Earth Sciences, Inc., 599 F.2d 368, 373 (10th Cir. 1979).

[29] Jones v. Lynn, 477 F.2d 885, 892 (1st Cir. 1973).

[30] Tennessee Valley Authority v. Hill, 437 U.S. 153, 194 (1978).

[31] The Navy, by reference to the legislative history of the Clean Water Act, attempts to show that Congress did not mean to "limit

The decision of the Court of Appeals is also consistent with the general rule that where a court is called upon to enjoin the continuing violation of a federal statute, general considerations of "equity" are tempered by the obligation to carry out the statutory mandate.[32] The rule does not change when courts are called upon to enjoin massive or nearly-completed government projects, even when many millions of dollars of public funds have already been spent.[33] As this Court stated recently in

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the traditional role of the courts in the enforcement process." Navy Pet. 8. On this point, however, the legislative history of the Clean Water Act is no different from that of any other major environmental statute. Congress intended to prohibit "the discharge of any pollutant," 33 U.S.C. § 1311(a), unless the discharger first secures an NPDES permit pursuant to 33 U.S.C. § 1342. The legislative history emphasizes the specificity and precision with which Congress wrote these mandatory standards for environmental protection into the Act. *See, e.g.*, Senate Debate on S. 2770, Nov. 2, 1971, in 2 *A Legislative History of the Water Pollution Control Act Amendments of 1972*, 93d Cong., 1st Sess. 1272 (1973).

Congress intended the permit to be the only means by which a discharger could escape the total prohibition of Section 1342. Natural Resources Defense Council, Inc. v. Costle, 568 F.2d 1369, 1374 (D.C. Cir. 1977); Bethlehem Steel Corp. v. Train, 544 F.2d 657, 659 (3d Cir. 1976), *cert. denied*, 430 U.S. 975 (1977). This Court specifically recognized that the Clean Water Act "established a new system of regulation under which it is illegal for *anyone* to discharge pollutants into the Nation's waters except pursuant to a permit." Milwaukee v. Illinois, —— U.S. ——, 49 U.S.L.W. 4445, 4447 (Apr. 28, 1981) (emphasis added). Two lower courts have reached the same conclusion. Cooper v. Wisdom, 440 F.Supp. 1027, 1030 (S.D. Fla. 1977); Save our Sound Fisheries Ass'n v. Callaway, 387 F.Supp. 292 (D.R.I. 1974).

[32] *See, e.g.*, Tennessee Valley Authority v. Hill, 437 U.S. 153, 194 (1978); United States v. City and County of San Francisco, 310 U.S. 16, 30-31 (1940) (rejecting "balancing of equities" with respect to an injunction where violation of Raker Act was shown); Buscaglia v. District Court of San Juan, 145 F.2d 274 (1st Cir.), *cert. denied*, 323 U.S. 793 (1944).

[33] Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971) (injunction upheld against a federal highway project which

American Textile Manufacturers Institute, Inc. v. *Donovan*: [34]

> For "[t]he judicial function does not extend to substantive revision of regulatory policy. That function lies elsewhere—in Congressional and Executive oversight or amendatory legislation." *Industrial Union Department* v. *American Petroleum Institute, supra*, slip op., at 2 (Burger, C.J., concurring); see *Tennessee Valley Authority* v. *Hill*, 437 U.S. 153, 185, 187-188, 194-195 (1978).

Only two months before the Navy filed its petition with this Court, the federal government successfully defended the lower court's issuance, without an evidentiary hearing, of an injunction to enforce new source performance standards under the Clean Air Act. *United States* v. *City of Painesville, Ohio*, 644 F.2d 1186 (6th Cir. 1981). In words that are relevant to this case as well, the court said:

> In *Hecht Co.* v. *Bowles*, 321 U.S. 321, 330 (1944), the Supreme Court emphasized that when a court is called upon to enforce a federal statutory injunction, its reliance upon the traditional practices of equity

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had been underway for more than ten years); National Wildlife Federation v. Coleman, 529 F.2d 359 (5th Cir.), *cert. denied sub nom.* Boteler v. National Wildlife Federation, 429 U.S. 979 (1976) (court enjoined ongoing construction of interstate highway upon finding a violation of the Endangered Species Act). In the leading case of Lathan v. Volpe, 455 F.2d 1111 (9th Cir. 1971), the government violated NEPA and Federal Highway Administration regulations by failing to prepare written environmental assessments of a highway project in downtown Seattle. Citing United States v. City and County of San Francisco, 310 U.S. 16 (1940), the Court of Appeals stated that "this case does not call for a balancing of equities . . .," 455 F.2d at 1116 (*quoting from* 310 U.S. at 30), and enjoined all construction and ordered the government to submit a detailed timetable of compliance with NEPA and other environmental statutes and regulations. *Id.* at 1122.

[34] —— U.S. ——, 49 U.S.L.W. 4720, 4733-34 (June 17, 1981).

must be "conditioned by the necessities of the public interest which Congress has sought to protect." In enacting the Clean Air Act, Congress made a determination that the public interest required that substantial measures be taken to combat the deleterious effects of air pollution. See 42 U.S.C. § 7401. The district court's discretionary injunctive powers were therefore tempered by its obligation to carry out the Congressional mandate contained in the Clean Air Act.

In a recent case, *TVA* v. *Hill*, 437 U.S. 153 (1978) (the "snaildarter" case), the Court held that the Endangered Species Act required the District Court to enjoin the completion of the Tellico Dam in East Tennessee, despite the lower court's doubts about the "wisdom . . . of a particular course consciously selected by the Congress." *Id.* at 194. The Court emphasized that it is the exclusive province of the Congress to formulate legislative policies and establish their relative priority . . . .

By enacting the Clean Air Act, Congress established a high priority for control of air pollution. The legislature recognized that compliance would be expensive in some cases, but the choice was made to require compliance with the standards promulgated by EPA. Having made that choice, Congress did not contemplate that its decision would be thwarted by judicial reluctance to require compliance when enforcement proceedings are brought and liability is proven. Accordingly, this Court holds that the district court was required to order injunctive relief upon its finding of liability, once negotiations for a compliance plan broke down. A hearing to determine the presence of irreparable injury and inadequacy of legal remedy was therefore unnecessary.[35]

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[35] 644 F.2d at 1193-94.

IV. The Decision of the Court of Appeals is a Narrow, Fact-Specific Decision that Raises No Significant Question of Federal Law.

In its petition, the Navy hypothesizes that the ruling below will have the far-reaching consequence of mandating the issuance of injunctions to redress technical violations of any federal environmental law. This argument, however, is not consistent with the limiting language of the First Circuit's decision. The Court of Appeals was careful to emphasize that it was not dealing with a "technical" violation of the Clean Water Act. Instead, the court reacted to the Navy's "utter disregard" of the statutory mandate. The injunction directed by the court below is an appropriate response to the Navy's egregious disregard of the permit requirements of the Clean Water Act.

The petition of the Navy raises only the narrow issue of the type of relief to be awarded for the utter disregard of the specific Clean Water Act requirement that an NPDES permit be obtained for the discharge of pollutants from point sources. The decision of the court below does not have broad implications. It does not establish precedent for the type of remedies that are appropriate for violations of lesser severity, violations of other provisions of the Clean Water Act, or violations of other environmental statutes. The decision of the court below is narrowly circumscribed by the unique and unusual facts of this case. Lower courts and other litigants would profit little from this Court's review of the Navy's petition.

V. Denial of the Navy's Petition Will Preserve the Fair and Equitable Relief Secured by Puerto Rico in the Court of Appeals.

The intensification of bombing and shelling activities on Vieques has adversely affected the marine environment in the coastal waters of Vieques. These activities continue to pose a significant hazard to the health and well-being of the island's inhabitants.[36] The injunction ordered by the court below, limited as to scope and duration, may enhance the quality of the marine environment and promote the safety of the people of Vieques.[37]

Puerto Rico has sought diligently to compel the Navy to observe the requirements of the Act. The relief that properly has been ordered under the Act should not be overturned.

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[36] The Navy asserts that the permit process is unlikely to yield new information about the "more extensive environmental harm" (Navy Pet. 14) resulting from its discharge of ordnance into the waters of Vieques on the ground that the environmental impact statement (EIS) it has now prepared allegedly discloses no significant adverse impacts on the coastal waters from the discharge of ordnance. But the EIS is a *Navy* document, not an *EPA* document. Furthermore, an important part of what the Court of Appeals was saying is that the permit process could reveal information that would help prevent or control environmental impact, not just whether there is greater environmental impact than is revealed by the EIS. The Navy's assertion totally disregards the role of the EPA in its review of NPDES permit applications and exhibits a disturbing indifference to the thrust of the permit requirements under the Clean Water Act. In any event, the Court of Appeals' determination that the permit process might reveal relevant information is not clearly erroneous, particularly in light of the report prepared for the Navy in 1972 warning about the environmental consequences of a shift from Culebra to Vieques.

[37] Ordnance can miss the target by at least six miles. During trial a shell missed the target by about six miles and nearly hit a fishing boat. C.A.J.A. 2738.

CONCLUSION

For these reasons, the Navy's petition for a writ of certiorari should be denied.

Respectfully submitted,

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July 1, 1981